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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

* * *

NO. 80-5658

* * *

RENE MIRELES RUIZ, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

* * *

ON APPEAL FROM COUNTY COURT AT LAW NUMBER 1

HIDALGO COUNTY, TEXAS

* * *

APPELLANT'S MOTION FOR LEAVE TO PROCEED IN FORMA PAUPERIS

Rene Mireles Ruiz, Appellant herein, respectfully asks leave of the Court to proceed in the above entitled cause in forma pauperis, pursuant to Rule 46 of the United States Supreme Court Rules, and, in support thereof, would show that:

1. Appellant requests to proceed in forma pauperis because he is indigent and without the funds necessary to pay for costs of appeal in this case.

2. Appellant has been unable to pay for any of the costs in the County Court at Law of Hidalgo County, Texas.

3. Appellant was granted leave to proceed on appeal in forma pauperis in County Court at Law Number 1 of Hidalgo County. The Statement of Facts and Transcript therein were provided without cost to Appellant. The Appellant would respectfully draw the Court's attention to his Motion for Transcript of the Record and for Permission to Proceed on Appeal in Forma Pauperis, which is set out at pages 16 through 18 in the official Court Transcript, filed together with these papers and included herein by reference for all purposes.

4. Appellant's attorney is representing him at no cost.

5. This motion is further based on the supporting affidavit of Appellant attached hereto and incorporated herein for all purposes.

WHEREFORE, Appellant respectfully prays that the Court grant him leave to proceed in this cause in forma pauperis.

Dated: November 3, 1980.

Respectfully submitted,

AMERICAN CIVIL LIBERTIES UNION
FOUNDATION--SOUTH TEXAS PROJECT
Box 1493
San Juan, Texas 78589
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By James C Harrington
James C. Harrington

Charles S. Sims
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132 W. 43rd Street
New York, NY 10036
(212/944-9800)

Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I personally delivered a true and correct copy of the foregoing Appellants' Motion for Leave to Proceed in Forma Pauperis to the Hidalgo County District Attorney, counsel for Appellee, at his office at the Hidalgo County Courthouse in Edinburg, Texas, on November 3, 1980.

James C Harrington
James C. Harrington
Attorney for Appellant

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V.

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ON APPEAL FROM COUNTY COURT AT LAW NUMBER 1

HIDALGO COUNTY, TEXAS

* * *

STATE OF TEXAS	§	AFFIDAVIT IN SUPPORT OF MOTION TO PROCEED ON APPEAL
COUNTY OF HIDALGO	§	IN FORMA PAUPERIS

BEFORE ME, the undersigned authority, personally appeared Rene Mireles Ruiz, who, being by me first duly sworn, did depose and state upon his oath as follows:

1. I am the Appellant in the above entitled cause; and, in support of my motion to proceed on appeal without being required to prepay fees, costs or give security therefor. I state that, because of my poverty, I am unable to pay the costs of said proceeding or to give security therefor. I believe that I am entitled to redress and that I desire to ask the Court to summarily reverse my conviction below on the grounds that it is precluded by the First Amendment to the United States Constitution.

2. I further swear that the statmements which I have made herein relating to my inability to pay the cost of prosecuting the appeal are true.

3. I am not presently employed. The date of my last full time employment was in November 1979 in Illinois. I have done some part-time work since then at the O. K. Garage in McAllen. I was unable to return to Illinois to work because of the lower court proceedings, and I lost my job there. As a result, I have been depending on my mother for food and a place to stay in McAllen. I am originally from McAllen, and my family still lives there.

4. I have not received, within the past twelve months, any income from a business, profession, or other form of self-employment, or in the form of rent payment, interest, dividends, or other source.

5. I do not have any cash, checking, or savings accounts.

6. I do not own any real estate, stocks, bonds, notes, automobiles, or other valuable property (excluding my own personal clothing).

7. I understand that a false statement in this affidavit will subject me to penalties for perjury.

Rene Ruiz

Rene Mireles Ruiz
Appellant

SWORN AND SUBSCRIBED TO BEFORE ME this 3rd day of November, 1980.

Margarita Velasquez

Notary Public in and for
Hidalgo County, Texas

My commission expires: 4/14/84

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RENE MIRELES RUIZ, APPELLANT

V.

THE STATE OF TEXAS, APPELLEE

* * *

ON APPEAL FROM COUNTY COURT AT LAW NUMBER 1

HIDALGO COUNTY, TEXAS

* * *

JURISDICTIONAL STATEMENT

* * *

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Attorneys for Appellant

QUESTION PRESENTED

Whether the First Amendment allows a conviction for "abusive language" when it is undisputed that Appellant's language did not provoke his two police officer listeners and did not have a tendency to provoke them and where it was conceded that the language was not communicated in a confrontation situation.

PARTIES

There are no parties to the proceeding in County Court at Law Number 1 of Hidalgo County other than those set out in the caption of the case.

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INTRODUCTION

Rene Mireles Ruiz appeals from a final judgment of County Court at Law Number 1 of Hidalgo County, Texas, entered on August 7, 1980, finding him guilty of disorderly conduct by abusive language. §42.01(a)(1)(1974), Texas Penal Code Annotated. He submits this Jurisdictional Statement to show that the Supreme Court of the United States has jurisdiction over this appeal and that prior decisions of this Court require summary reversal or, alternatively, plenary consideration of the substantial federal question presented.

OPINION BELOW

There is no formal opinion of the County Court at Law in this case. The record does reflect the Court's oral and written decisions on the First Amendment issue at various points throughout the trial.

JURISDICTION

A criminal complaint was presented in the Municipal Court for McAllen, Hidalgo County, Texas, on April 3, 1980, pursuant to §42.01(a)(1), charging Appellant with disorderly conduct by abusive language. He was also charged with public intoxication. He was found guilty of both charges and fined.

Appellant then "appealed" to the County Court at Law for a trial de novo. Article 45.10 (1965), Texas Code of Criminal Procedure Annotated. A jury trial was held on July 22, 23, and 24, 1980. Appellant was found not guilty of public intoxication but again convicted of abusive language.

Appellant's claim that the Texas statute as applied to him in this situation was unconstitutional under the First Amendment was properly raised and preserved throughout the trial.

Final judgment was entered on August 7, 1980, after the Court denied Appellant's Motion for New Trial, which again raised the First Amendment issue. (Statement of Facts: pp. 280 - 281). The Court, upon recommendation of the jury, imposed a fine of Fifty Dollars ($50.00), plus court costs.

The federal questions decided by the trial court were certified by that Court on October 30, 1980 (Transcript: p. 24B).

Notice of Appeal to the Supreme Court of the United States was timely filed on November 3, 1980 (Transcript: p. 24C).

No review of the substantial federal questions presented in this case is available within the Texas appellate system because the crime was classified as a "Class C" misdemeanor and the fine imposed did not exceed $100. Article 4.03(1965), Texas Code of Criminal Procedure.

Therefore, County Court at Law Number 1, even though aware of the substantial constitutional question that was presented and the lack of any interpretation of §42.01(a)(1) by the Texas Court of Criminal Appeals, was the highest available Court in Texas to determine the applied validity of §42.01(a)(1) in the face of the Appellant's substantial First Amendment challenge.

Under these circumstances, jurisdiction to review the County Court judgment herein is conferred on this Court by 28 U.S.C. §1257(2). Dahnke-Walker Milling Co. v. Bondurant, 257 U.S. 282 (1921); Cohen v. California, 403 U.S. 15 (1971); Powell v. Texas, 392 U.S. 514 (1968); Thompson v. Louisville, 362 U.S. 199 (1960). Cf. Brown v. Texas, 443 U.S. 47 (1979).

This Court recently exercised jurisdiction to summarily reverse a case very similar to this from County Court at Law No. 2 in Travis County, Texas. Acker v. Texas, 430 U.S. 962 (1977).

CONSTITUTIONAL AND STATUTORY PROVISIONS

The First Amendment to the United States Constitution reads, in pertinent part: "Congress shall make no law...abridging the freedom of speech...."

The Texas abusive language statute appears in §42.01(a)(1), Vernon's Annotated Texas Statutes, Penal Code, Vol. 4, p. 124:

> §42.01. DISORDERLY CONDUCT
>
> (a) A person commits an offense if he intentionally or knowingly:
>
> (1) uses abusive, indecent, profane, or vulgar language in a public place, and the language by its very utterance tends to incite an immediate breach of the peace. . . .

The jurisdiction of the Texas Court of Criminal Appeals is controlled in pertinent part by Article 4.03, which is set out in Vernon's Annotated Texas Statutes, Code of Criminal Procedure, Vol. 1, p. 371 (1965):

ARTICLE 4.03. COURT OF CRIMINAL APPEALS

> The Court of Criminal Appeals shall have appellate jurisdiction coextensive with the limits of the State in all criminal cases. This Article shall not be so construed as to embrace any case which has been appealed from any inferior court to...the county court at law, in which the fine imposed by...the county court at law shall not exceed one hundred dollars.

STATEMENT OF THE CASE

Appellant Rene Mireles Ruiz was riding in a pick-up truck one evening with a friend, Randall Sarabia, who was driving. Two Department of Public Safety (DPS) officers stopped Sarabia for running a red light and cutting a corner through a parking lot.

One of the DPS officers, Carlos Benavides, ordered Sarabia to drive to the police department about two miles away, where he issued a traffic citation to Sarabia. Concerned and irritated that Benavides had brought them into the department rather than ticketing his friend with a citation on the street, the Appellant expressed his displeasure to Benavides.

While Sarabia was receiving the traffic citation, Appellant returned to sit in the passenger side of the pick-up. It was quite late at night, and the parking lot was virtually empty. Shortly thereafter, the two DPS officers went to leave and got in their car which was parked near the passenger side of the pick-up.

At this point, the testimony of the Appellant and the officers diverges. The Appellant claims that he simply glared at the officers. The officers claim that he, while seated in the truck, listening to music, shouted "motherfucker" loudly three times at Benavides.

It is undisputed, however, that neither officer felt provoked or urged to violence in any way. (Statement of Facts: p. 37, line 11; p. 59, lines 5 - 9; p. 77, line 24 - p. 78, line 7; p. 79, lines 8 - 14; p. 80, lines 11 - 15; p. 98, line 15 - p.

99, line 1; p. 99, lines 11 - 14).

Appellant was then charged with and convicted of public intoxication and abusive language in municipal court. On appeal to the County Court, he was acquitted of public intoxication but again convicted of the crime of abusive language.

THE QUESTION PRESENTED IS SUBSTANTIAL

Mr. Justice Harlan's introductory sentence to the First Amendment decision in Cohen v. California, 403 U.S. 15 (1971), states well the substantiality of the federal question presented in this case:

> This case may seem at first blush too inconsequential to find its way into our books, but the issue it presents is of no small constitutional significance.

This appeal presents a constitutional question which substantially affects every State's court and law enforcement systems. It lies at the heart of police/community relations and the growing disaffection between citizens and the criminal justice system.

Every State in the Union, in some form or another, seeks to criminalize abusive language (See attached Appendix A). Most of the statutes, like Texas', provide for relatively minor penalties of fines or fines and jail time. Although some abusive language situations arise between private citizens, the vast majority are between a private citizen and a law enforcement official; and the citizen is quite likely to spend at least one night in jail and feel the immediate impact of an exercise of state "police power" before being released from custody.

The facts set out in the Jurisdictional Statement in Acker v. Texas, supra, which summarily reversed the Travis County Court in a case very similar to this one, are helpful in understanding the breadth of cases dealing with abusive language.

In Austin, Texas, alone, in 1975, there were 994 custody arrests for disorderly conduct. Thirty-five of those arrested were released; the remaining 959 persons were charged. Austin Police Department, Statistical Report - 1975, p. 5.

The Austin Municipal Courts are the most crowded courts in

Austin. Traffic cases make up the bulk of the caseload. Public intoxication is the second most frequent offense charged, and abusive language is the third. For example, in one month, between September 2 and October 6, 1976, eighty-seven cases were filed for abusive, indecent, profane, or vulgar language. Another forty-three complaints were filed for being abusive or threatening "in an obviously offensive manner" under §42.01(a)(4), a section of the Texas Penal Code which is also used to charge many speech offenses. Almost all of the 994 arrests and 959 charges for disorderly conduct by the Austin Police Department in 1975 were for some type of abusive language.

If this number of arrests and cases is extrapolated across Texas and the nation, it is reasonable to deduce that, except for traffic charges and intoxication charges, more people are brought to bar in our lower courts to answer for "speech" crimes than any other category. If a nationwide statistical source were readily available, the numbers of such cases would be shocking.

Furthermore, many courts in which such cases are tried do not appoint counsel for indigent defendants; and, indeed, the judge may not be an attorney.

All these factors intersect many times a day throughout the United States to produce a very summary form of criminal justice in these cases. Often lost is the fact that, in every abusive language case, unlike traffic and intoxication cases, there is an overriding First Amendment question.

The Texas statute is a "second generation" statute drafted to be facially valid under the Chaplinsky-Gooding line of cases.

Appellant's case demonstrates the need for this Court's continuing supervision and guidance to ensure that abusive language statutes are not applied to abridge freedom of speech, even when as narrowly drawn as can reasonably be expected of the State. If this Court does not summarily reverse, as it must under controlling precedent, it should set the ase for plenary consideration.

The federal question presented to the trial court in this case is substantial.

APPLICATION OF THE TEXAS ABUSIVE LANGUAGE STATUTE TO SPEECH WHICH DOES NOT HAVE A TENDENCY TO INCITE A LISTENER TO VIOLENCE ABRIDGES FREEDOM OF SPEECH

The question here is whether the language alleged to have been spoken in this case can be prosecuted under the Texas abusive language statute without rendering the statute as applied invalid under the First Amendment. It cannot.

This raises questions of law and fact. The Supreme Court will review a State court's findings of fact

> [w]here a Federal right has been denied as the result of a finding shown by the record to be without evidence to support it; or where a conclusion of law as to a Federal right and a finding of fact are so intermingled as to make it necessary, in order to pass upon the Federal question, to analyze the facts.

Fiske v. Kansas, 274 U.S. 380, 385-386 (1927).

The trial jury in effect found that Appellant's words were "fighting words". That decision, essential to the finding of guilt, puts this case squarely in conflict with prior rulings of this Court on "fighting words". Chaplinsky v. New Hampshire, 315 U.S. 568 (1942); Gooding v. Wilson, 405 U.S. 518 (1972). The Appellant raised this point at the earliest and each possible opportunity, both at the opening and close of the State's case.

It is essential that "fighting words" tend to incite some immediate violence. Although, as originally stated, the doctrine applied where t ere was such a tendency or where the words did "inflict injury" */, the Court in recent years has omitted the "inflict injury" test, based, as it is, on harm to sensibilities rather than to public order. See Rutzick, Offensive Language and the Evolution of the First Amendment, 9 Harvard Civil Rights -- Civil Liberties Law Review 1, 22 (1974).

The Court in Cohen restated the Chaplinsky doctrine without any reference to personal injury or "sensibilities":

---

*/ There are certain well-defined and narrowly limited classes of speech, the prevention and punishment of which have never been thought to raise any Constitutional problem. These include...the insulting or "fighting" words--those which by their very utterance inflict injury or tend to incite an immediate breach of the peace [footnotes omitted].

Chaplinsky v. New Hampshire, 315 U.S. at 571 - 572.

> This Court has also held that the States are free to ban the simple use, without a demonstration of additional justifying circumstances, of so-called "fighting words," those personally abusive epithets which, when addressed to the ordinary citizen, are, as a matter of common knowledge, inherently likely to provoke violent reaction.

Cohen v. California, 403 U.S. at 20.

Shortly thereafter, this Court decided Gooding v. Wilson, which more explicitly rejected the "sensibilities" doctrine. In holding that Georgia had punished a broader category of language than the First Amendment would permit, Justice Brennan's opinion for the Court observed:

> Plainly, although "conveying . . . disgrace" or "harsh insulting language," these were not words "which by their very utterance . . . tend to incite an immediate breach of the peace."

Gooding v. Wilson, 405 U.S. at 526.

The First Amendment guarantees permit punishment only of "fighting words", words which "...have a direct tendency to cause acts of violence by the person to whom, individually, the remark is addressed." Gooding v. Wilson, 405 U.S. at 524. Cf. also Chaplinsky v. New Hampshire, 315 U.S. at 573.

In adopting that narrow definition, this Court specifically rejected the common experience test which allowed the jury to set its own standards and convict for language it found unacceptable or offensive regardless of its actual effect. Gooding, 405 U.S. at 527. The Court found that such a test was overly broad and constitutionally infirm because it failed to properly limit the jury to finding a breach only where "fighting words" were used and because it allowed punishment for use of protected speech.

Under Gooding, the jury must find that fighting words were actually used. 405 US at 528. This narrow test was designed precisely to prevent the type of conviction presently before the Court whereby a breach is found notwithstanding the lack of any "fighting words".

Numerous other cases clearly indicate that punishment for abusive speech requires a tendency to incite immediate violence, and not merely harm to sensibilities. Rosenfeld v. New Jersey, 408 U.S. 901 (1972)(per curiam); Brown v. Oklahoma, 408 U.S. 914 (1972); Cason v. City of Columbus, 409 U.S. 1053 (1972) (per

curiam); Papish v. Board of Curators, 410 U.S. 667 (1973); Hess v. Indiana, 414 U.S. 105 (1973); Lucas v. Arkansas, 494 S.W.2d 705 (Ark. 1974) rev'd and remanded, 416 U.S. 919 (1974), appeal dismissed 423 U.S. 807 (1975).

Nevertheless, despite such clear authority, the County Court wrongly refused to advise and instruct the jury that it could only find Appellant guilty if it found he had used language which tended to incite an immediate breach of the peace "by the person to whom the language was addressed" [Transcript: Defendant's first proposed Charge of the Court, p. 9; and Defendant's Proposed Second Charge of the Court (Paragraphs I and VII), p. 10].

Further, the County Court erroneously used an expansive and unconstitutional definition of "breach of the peace", despite the Appellant's objections. [Transcript: Defendant's Proposed Second Charge of the Court (Paragraph V), p. 10; and Objections to the Charge, p. 11]. The County Court instructed the jury:

> The term "Breach of the Peace" is defined as: All violations of public peace or order, or decorum; in other words, it signifies the offense of disturbing the public peace or tranquility enjoyed by the citizens of a community; a disturbance of the public tranquility by any act or conduct inciting to violence or tending to provoke or excite others to break the peace; a disturbance of public order by an act likely to produce violence, or which by causing consternation, alarms and disturbs the peace and quiet of the community.

However, Gooding rejected broad definitions of "breach of the peace" wherein breach includes

> "...all violations of the public peace or order, or decorum; in other words, it signifies the offense of disturbing the public peace or tranquility enjoyed by the citizens of a community....By 'peace; as used in this connection, is meant the tranquility enjoyed by the citizens of a municipality or a community where good order reigns among its members."

405 U.S. at 527.

The definition used by the County Court below is almost verbatim to that specifically faulted in Gooding, and it is just as defective.

First Amendment freedoms would be sharply eroded if the mere use of unacceptable or offensive language were punishable. There is no constitutionally sound basis for punishing some language or words per se:

> For, while the particular four-letter word being litigated here is perhaps more distasteful than most others of its genre, it is nevertheless often true that one man's vulgarity is another's lyric.

Cohen v. California, 403 U.S. at 25.

Cohen, Gooding, and their progeny in this Court demonstrate that Appellant's language was protected as a matter of law. Yet, even if the matter were looked at as one of fact, rather than a question of law (as Gooding suggested), there was no evidence in the trial of this case to indicate that there was even the remotest possibility of a breach of the peace.

Both parties remained seated in their respective automobiles during the entire episode (Statement of Facts: p. 99, line 15 - p. 100, line 20; p. 142, lines 7 - 11).

The complaining witness, Carlos Benavides, testified that the language did not "upset" him and that he did not feel provoked in any way (Statement of Facts: p. 37, line 11; p.59, lines 5 - 9). The other officer with Benavides at the time and to whom the language was not addressed was merely "offended", but not provoked by the language (Statement of Facts: p. 89, line 16). In fact, that officer was not exactly sure what disorderly conduct by abusive language was (Statement of Facts: p. 106, lines 16 - 21). Finally, one of the State's witnesses affirmed that, when he saw Appellant right after the incident, Appellant was "cooperative" (Statement of Facts: p. 253, lines 3 - 6). The word allegedly uttered was admittedly not a fighting word. It may be distasteful, but such language cannot be punished consistently with First Amendment guarantees of free speech.

Nevertheless, notwithstanding the fact that the word at issue did not tend to cause any breach of the peace, the trial judge and jury did what many trial judges and juries do daily when faced with similar abusive language cases: the County Court allowed the jury to apply a "sensibilities" doctrine, finding the word a "fighting word" if it tended to injure Officer Benavides'

The decisions of this Court make it plain that the conviction here violated the First Amendment. It is clear that State cannot criminalize particular words, specifically the word "fuck". Cohen v. California, 403 U.S. at 26. The word does not, as a matter of law, incite a breach of the peace; and its impact on the sensibilities of hearers is constitutionally irrelevant.

In Gooding, the Court held that Georgia could not punish "God damn you, why don't you get out of the road". 405 U.S. at 525. Just as that phrase could not, as a matter of law, be found "fighting words", so too with the word "motherfucker" allegedly spoken by Appellant.

The facts in this case are strikingly similar to those that resulted in this Court's summary reversal or vacation of convictions under numerous State abusive language statutes. In Acker v. Texas, Acker drove up alongside the complaining witness' car which had been involved in a minor traffic incident and stated, probably more than once, "Get your fucking car out of the way. You're blocking traffic." (Acker Jurisdictional Statement, Appendix A, pp. 13, 28). See also Lewis v. New Orleans, 415 U.S. 130 (1974) (striking down statute permitting punishment for addressing police officer as "god damn mother fucking police");

---

*/ It is important to note that Appellant was not arrested for public intoxication until Benavides heard the language and determined that he was "a danger to himself or others" because of that language (Statement of Facts: pp. 68 - 69). One of the elements of the Texas law on public intoxication requires a prior-arrest determination that the person is a danger to self or another. Article 42.08, Texas Penal Code Annotated. Thus, the jury's decision that Appellant was not publicly intoxicated shows that the jury must not have believed that Appellant's language was really "dangerous"; and, if it was not dangerous, it looks even more like the jury applied a "sensibilities" test, rather than the "fighting words" test.

Lucas v. Arkansas, supra, (vacating conviction for saying "big, bad mother fucking cops" and "chicken shit mother fucker" to officers); Rosenfeld v. New Jersey, supra (vacating conviction for uttering "motherfucker"), indictment dismissed, 303 A.2d 889 (1973); Brown v. Oklahoma, 408 U.S. 914 (1972) (vacating conviction for uttering "motherfucker facist pig cops"), indictment dismissed, 503 P.2d 571 (Okla. Ct. Crim. App. 1971). These cases plainly require summary reversal here.

The word "motherfucker" in this case was similarly "emotive", as in the cases above, to emphasize the Appellant's evident displeasure with the officers' having taken his friend to the police station merely to give him a traffic ticket. It had no tendency to incite immediate violence, especially if uttered under these understandably annoying circumstances by a wholly innocent third party who finds himself detained outside a police station while waiting for a friend.

In short, this Court's consistent First Amendment jurisprudence clearly requires summary reversal. Alternatively, this Court should call for briefs and oral arguments in order to build an analytical model for application to such abusive language situations. The impact of arguably valid statutes being applied on the streets and in our courts in an obviously overbroad manner can only serve to increase the daily strain on an already over burdened police/community relations. It is exactly this type of citizen disaffection in one sensitive area that generates general disgust and lack of faith in the criminal justice system.

CONCLUSION

For the foregoing reasons, the question presented by this appeal is substantial and of great public importance. Appellant respectfully urges that probable jurisdiction should be noted and the case summarily reversed. Alternatively, the Court should set this case for plenary consideration.

Dated: November 4, 1980.

Respectfully submitted,

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Attorneys for Appellant

CERTIFICATE OF SERVICE

I hereby certify that I personally delivered a true and correct copy of the foregoing Jurisdictional Statement to the Hidalgo County District Attorney for Hidalgo County, counsel for Appellee, at his office at the Hidalgo County Courthouse in Edinburg, Texas, on November 4, 1980.

James C Harrington
James C. Harrington
Attorney for Appellant

APPENDIX A

LIST OF ABUSIVE LANGUAGE STATUTES BY STATE

ALA. CODE, §13-6-100 (1975)

ALASKA STAT., §11.45.030(3) (1975)

ARIZ. REV. STAT. ANN., §13-2904 (1978)

ARK. STAT. ANN., §1-2908 (1975)

CAL. PENAL CODE, §415(3) (1976)

COLO. REV. STAT. REV., §18-9-106(a) (1973)

CONN. GEN. STAT. REV., §53a-181(5) (1972)

DEL. CODE ANN., §1301(1)(b) (1974)

D.C. CODE ENCYCL. ANN., §22-1121(1) (1967)

FLA. STAT. ANN., §877.03 (1976)

GA. CODE ANN., §26-2610 (1972)

HAWAII REV. STAT., §38-772-2(1) (1968)

IDAHO CODE, §18-6409 (1975)

ILL. ANN. STAT., §26-1(a)(1) (1976)

IND. ANN. STAT., §10-1510 35-45-1-3(1) (1976)

IOWA CODE ANN., §723.4(3) (1976)

KAN. STAT. ANN., §21-4101(c) (1974)

KY. REV. STAT. ANN., §525-070(1)(b) (1979)

LA. REV. STAT. ANN., §14:103(A)(1) (1979)

ME. REV. STAT. ANN., Title 17A, §501(B)(2) (1976)

MD. ANN. CODE, Article 27 §121 (1976)

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